

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-15 are in this case. Claims 13-15 have been rejected under § 101. Claims 1-15 have been rejected under § 102(b) or § 103(a). Independent claims 1, 7 and 13 have now been amended. Claims 10-12 have been canceled. New claims 16-18 have been added.

The claims before the Examiner are directed toward a shopping system and method including a compact demo-store where display and sales space is separate from product storage space. In contrast to the cited art, the invention provides customers with a one-stop shopping experience where they are free to return to work or recreation on exiting the store.

§ 101 Rejections – Claims 13-15

The Examiner has rejected claims 13-15 under § 101 as directed to non-statutory subject matter.

In justifying this rejection, the Examiner has applied a “technological arts” test for which he finds basis in the cases of In re Musgrave, 431 F.2d 882, 167 USPQ 280 (CCPA 1970); In re Toma, 575 F.2d 872, 197 USPQ 852 (CCPA 1978); and Ex parte Bowman, 61 USPQ2d 1669 (Bd. Pat. App. & Int. 2001)(non-precedential).

The Examiner seems to have overlooked the more recent decision of the Board of Patent Appeals and Interferences in Ex parte Lundgren in which the board established that this caselaw does not establish any such independent test for “technological arts.” Instead, the board reverted to the well established definition of the exclusions under § 101 as relating only to “laws of nature, physical phenomena”

and abstract ideas,” as established in Diamond v. Diehr, 450 U.S. 175, 185, 209 USPQ 1, 7 (1981). The decision in Ex parte Lundgren has been designated a precedential opinion. In this regard, the Examiner is referred to the Interim Guidelines issued by the PTO on October 26, 2005, Appendix III (page 42), where it is explicitly stated that: United States patent law does not support the application of a "technical aspect" or "technological arts" requirement. The full text of the Interim Guidelines may be found at the following link:

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf

In the present case, claims 13-15 as before the Examiner clearly do not relate to “laws of nature, physical phenomena and abstract ideas,” and therefore satisfy the statutory conditions for patentable subject matter according to § 101 as properly interpreted by the courts. Reconsideration of the rejections under § 101 are respectfully solicited.

§ 102(b) Rejections – Claims 10-12

The Examiner has rejected claims 10-12 under § 102(b) as being anticipated by Rosenberg (US 5,933,814). The Examiner’s rejections are respectfully traversed.

While continuing to traverse the Examiner’s rejections, in order to simplify the issues before the Examiner, the Applicant has chosen to cancel claims 10-12 without prejudice, thereby rendering moot the Examiner’s rejection of these claims.

§ 102(b) & § 103(a) Rejections – Claims 1-9 and 13-15

The Examiner has rejected claims 1, 3, 4 and 7-9 under § 102(b) as being anticipated by Schlamp (US 5,431,250). The Examiner has also rejected claims 2, 5, 6 and 13-15 under § 103(a) as being unpatentable over Schlamp, alone or in

combination with one of more of Byrley (US 4,735,290), Tracy et al. (US 5,979, 757) and Official Notice. The Examiner's rejections are respectfully traversed.

Schlamp identifies and addresses a very specific problem (col. 1, lines 17-28) where consumers driving their cars to down-town stores cause congestion and traffic jams in the inner-city areas. To solve this problem, Schlamp proposes locating "product distribution stations" at parking lots out of town so that suburban customers can "park-and-ride" by public transport into the city, make their purchases, and then return by public transport to their cars where they load up the products before returning home. Thus, Schlamp discloses a very inefficient two-stop shopping process where the customer shops at a first location and must then travel to a second remote location to collect his or her purchases.

This functionality is explicit in the Abstract and throughout the description where Schlamp teaches a sales system including a sample shop located at a first location and a product distribution station located at a second location, at a distance from the first location. After using a data entry device to assemble a shopping list, the client needs to go physically to the product distribution station at the second location in order to collect the products.

Thus, the entire shopping procedure of Schlamp requires:

- parking at the out-of-town distribution center;
- taking public transport into town;
- purchasing at the "sample shop";
- taking public transport back to distribution center; and
- loading the car and driving home.

Far from facilitating and simplifying the shopping procedure, Schlamp actually renders it much more complex. One wonders what advantage Schlamp

achieves compared to simply providing the entire shopping experience in an out-of-town conventional store adjacent to the "distribution center".

In contrast, the system and method of the present invention provides a one-stop shopping system in which the entire shopping procedure begins and ends on entering and leaving the sample store, as emphasized in the specification (page 16, line 12) that, when the customer exits the store, "she is free to return to work or recreation". The customer has no interaction with the remote warehouse and packing facility, and typically does not know or care where it is located. In fact, the warehouse and packing facility is typically off-limits to customers, as mentioned on page 9, lines 4-5. The purchased products then arrive later directly to a requested delivery point.

This contrast turns the inefficient system of Schlamp into a highly desirable solution through which it becomes feasible to provide compact local stores with wide selections of goods even where real-estate prices are high. By completely dissociating the consumer from the distribution center, the system avoids Schlamp's assumptions of proximity between the distribution center and the consumer's home. As a result, the system becomes useful for many circumstances not addressed by Schlamp, such as permanent residents of inner-city areas, and those who, for whatever reason, need or prefer to drive their cars into the down-town area.

While continuing to traverse the Examiner's rejections, the Applicant has, in order to expedite the prosecution, chosen to amend independent claims 1, 7 and 13 in order to clarify and emphasize the crucial distinctions between the system and method of the present invention and those of the Schlamp patent cited by the Examiner. Specifically, claims 1, 7 and 13 have now been amended to clarify that that the warehouse a packing facility is at a location separate from a location of the display module and off limits to the customers, and that the delivery instructions are

indicative of a requested delivery point to which the products are delivered. These amendments make it absolutely clear that the shopping system and method of the present invention provide a one-stop shopping procedure, thereby clearly distinguishing over the two-stop procedure of Schlamp.

Support for these amendments can be found in the specification. Specifically, support for the separate locations of the display module and the warehouse and packing facility may be found in Figure 6 and on page 15, lines 4-6. Support for the warehouse and packing facility being off-limits to the customers can be found on page 9, lines 4-5. Support for the requested delivery point can be found on page 16, line 15.

Amended independent claims 1, 7 and 13 now feature language which makes it absolutely clear that the device of the present invention provides a shopping system and method in which the customer generates a shopping list at a sample store and need not go to any other location in order to complete the shopping procedure. The Applicant believes that the amendment of the claims completely overcomes the Examiner's rejections of independent claims 1, 7 and 13, and hence also of dependent claims 2-6, 8, 9, 14 and 15, on § 102(b) and § 103(a) grounds.

New Claims 16-18

The Applicant takes this opportunity to submit new dependent claims 16-18 which depend, respectively, from independent claims 1, 7 and 13. Independent claims 1, 7 and 13 are believed to be patentable, thereby rendering new dependent claims 16-18 also patentable.

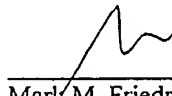
Dependent claims 16-18 further distinguish over the Schlamp reference by reciting the nodal structure illustrated in Figure 6 and described on page 15 lines 1-6 wherein a warehouse and packing facility serves plural sample stores, thereby providing enhanced convenience to customers while minimizing infrastructure costs.

Here again, the system and method is made possible by the dissociation of the warehouse and packing facility from the customer. Since the customer never needs to go to the warehouse and packing facility, the relative location of the sample store to the warehouse and packing facility has no affect on the customer's convenience, thereby rendering it feasible to centralize the warehouse and packing facility infrastructure.

The advantages of this feature are detailed on page 11, lines 9-11 and 15-16, where it specifies "inventory management is centralized, and each supplier transports merchandise and/or produce to a single location only." Furthermore, "since the goods are stored at a single location at a warehouse and packing facility serving multiple demo-supermarkets, inventory management is simplified and therefore there is minimal monetary loss due to exceeding the shelf life of perishable items."

In view of the above amendments and remarks it is respectfully submitted that independent claims 1, 7 and 13, and hence also dependent claims 2-6, 8, 9 and 14-18, are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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